



The following constitutes
the order of the court. Signed January 20, 2015

A handwritten signature in black ink, which appears to read "William J. Lafferty, III".

William J. Lafferty, III
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

In re
Rickey Lee Aberle

Debtor.

Jeffrey Koopen, *by and*
through his Guardian ad
*Lite*m, Jacobus Koopen,

Plaintiff,

v.

Rickey Lee Aberle,
Defendant.

No. 09-46563
Chapter 7

Adv. Pro. No. 09-04463

MEMORANDUM REGARDING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

The defendant in this adversary proceeding, Rickey Lee Aberle ("Defendant"), filed a Motion for Summary Judgment on

1 July 2, 2014. The plaintiff, Jeffrey Koopen ("Plaintiff"),
2 filed an Opposition on July 22, and a hearing was held on
3 August 6, 2014. At the conclusion of the hearing, the court
4 requested the parties submit supplemental briefs. The
5 supplemental briefs were filed on September 8, and September
6 29, 2014, and the court took the matter under submission. For
7 the reasons discussed below, Defendant's Motion for Summary
8 Judgment is denied.
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10 Factual Background & Procedural History

11 On September 23, 2005, Plaintiff was a passenger in a boat
12 that was piloted by Defendant. An accident occurred, and
13 Plaintiff suffered serious personal injury. On April 20, 2006,
14 Plaintiff filed a complaint in Alameda County Superior Court
15 against Defendant stating a negligence cause of action.¹ On
16 July 22, 2009, five days before the scheduled trial in the
17 state court case, Defendant filed chapter 7 bankruptcy in the
18 Northern District of California, Oakland Division. *In re Rickey*
19 *Lee Aberle*, Bankr. No. 09-46563 (Bankr. N.D. Cal. July 22,
20 2009). The filing of the bankruptcy case triggered an
21 automatic stay that prevented the state court action from
22 proceeding. On October 19, 2009, Plaintiff filed this
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26 ¹ *Jeff Koopen an incompetent person, by and through his Guardian Ad*
27 *Litem Jacobus Koopen v. Rick Aberle, et al.*, Alameda Super. Ct. No.
28 HG06266136, a copy of which is attached as Ex. A to the Decl. of Alison
M. Crane in Supp. Of Def.'s Mot. Summ. J., July 2, 2014, ECF No. 45
(hereinafter "Crane Decl.").

1 adversary proceeding. The complaint alleged Defendant was
2 liable to Plaintiff for injuries arising from the boating
3 accident, and that Defendant's liability was excepted from
4 discharge under sections 523(a)(6) and 523(a)(9) of the United
5 States Bankruptcy Code. A debt is excepted from discharge
6 under section 523(a)(6) if it arises from willful or malicious
7 injury by the debtor to another entity, and under section
8 523(a)(9) if the debt arises from personal injury caused by the
9 debtor's unlawful operation of a motor vehicle due to
10 intoxication. 11 U.S.C. § 523(a) (2012).

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13 At the initial status conference in this adversary
14 proceeding on December 9, 2009, the bankruptcy court (the
15 undersigned judge's predecessor) lifted the automatic stay *sua*
16 *sponte* to allow the state court action to proceed, and stayed
17 this adversary proceeding pending the outcome of the state
18 court action. The bankruptcy court lifted the stay "only for
19 the purpose of liquidating the claim in the amount of the
20 judgment," and the parties were to return to bankruptcy court
21 once the claim was liquidated "for a determination as to
22 nondischargeability." Tr. of Status Conference at 3, *Koopen v.*
23 *Aberle (In re Aberle)*, Adv. No. 09-04463 (Bankr. N.D. Cal. Dec.
24 9, 2009). At the conclusion of the hearing, the bankruptcy
25 court also suggested that, in the interests of judicial
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1 economy, the Plaintiff seek a determination on Defendant's
2 intoxication in the state court proceeding. *Id.* at 5-6.

3 Plaintiff returned to state court and filed a brief that
4 requested issues of intoxication be included in a special
5 verdict form because intoxication was a basis for negligence
6 *per se*, and an intoxication determination would assist the
7 bankruptcy court to liquidate the claim.² Plaintiff further
8 argued that the automatic stay was lifted to allow the state
9 court to determine the intoxication issue.³ After voicing some
10 concerns, the state court approved the request for a special
11 verdict, and the verdict form instructed the jury first to
12 consider whether Defendant was liable under a negligence *per se*
13 theory, and if not, then consider if Defendant was liable under
14 a traditional negligence theory. When considering the
15 negligence *per se* theory, the jury was to determine if
16 Defendant was intoxicated, and if Defendant's intoxication was
17 a substantial factor in causing Plaintiff's injuries.
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21 After conclusion of the trial, the jury determined
22 Defendant was not intoxicated "when he operated the vessel at
23 the time of the accident," and this ended the jury's negligence
24 *per se* analysis.⁴ The jury proceeded to determine if Defendant
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26 ² See Pl.'s Br. Re Intoxication Questions in Special Verdict Form, a
27 copy of which is attached as Ex. E to the Crane Decl.

28 ³ *Id.*

⁴ J. on Special Verdict a copy of which is attached as Ex. G to the
Crane Decl.

1 was negligent under a traditional theory, and whether
2 Defendant's negligence was a substantial factor in causing
3 Plaintiff's injuries. The jury concluded Defendant was
4 negligent because he chose to use a boat without a spot light,
5 and piloted a boat at an excessive speed, and these were
6 substantial factors in causing Plaintiff's injuries.⁵ The jury
7 calculated and apportioned damages, and assigned 35% of the
8 responsibility for damages to Defendant.⁶ However, it is
9 unclear from the record if the jury considered Defendant's non-
10 intoxication when calculating and apportioning damages.⁷

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12 The issue of whether Defendant consumed alcohol and
13 marijuana on the day and night of the accident was litigated in
14 the state court action. After the evidence was submitted,
15 Defendant moved to strike all evidence of Defendant's alcohol
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19 ⁵ The judgment indicates that the jury deliberated and returned a
20 special verdict of "No" in response to the question "Was Defendant Rick
21 Aberle intoxicated when he operated the vessel at the time of the
22 accident?". The judgment also indicates the jury returned a verdict of
23 "Yes" in response to the question "Was Rick Aberle negligent?" and "Was
24 Rick Aberle's negligence a substantial factor in causing harm to Jeff
Kooen?". See *Special Verdict* a copy of which is attached as Ex. F to
the Crane Decl. The jury determined Defendant was negligent because he
chose to use a boat without a spot light, and piloted a boat at an
excessive speed. See *Kooen v. Aberle*, 2014 WL 795662 at *5 (Cal. App.
1st Dist. Feb. 28, 2014).

25 ⁶ The judgment calculates Plaintiff's damages at \$5,991,386.81 and
26 assigns 35% of the responsibility for damages to Defendant. The
27 remaining responsibility for Plaintiff's harm was assigned 55% to Colin
Trois, and 10% to Jeff Kooen. See *Special Verdict* at 4, a copy of
which is attached as Ex. F to the Crane Decl.

28 ⁷ See *Special Verdict* a copy of which is attached as Ex. F. to the Crane
Decl.; *J. on Special Verdict*, a copy of which is attached as Ex. G to
the Crane Decl.

1 consumption and drug use.⁸ The court struck the evidence of
2 marijuana use because the effects of marijuana on the human
3 body were not common knowledge, and Plaintiff failed to provide
4 evidence explaining these effects. *Koopen v. Aberle*, 2014 WL
5 795662 at *2 (Cal. App. 1st Dist. Feb. 28, 2014). The evidence
6 regarding Defendant's blood alcohol content was excluded
7 because it was not supported with expert testimony. *Id.* at *2
8 n. 3.

10 The Plaintiff appealed to the California Court of Appeal
11 for the First District. A Statement of Issues on Appeal was
12 not filed; however, the issues presented to the Court of Appeal
13 were set forth in the Appellant's Opening Brief.⁹ In the Brief
14 Plaintiff argued that the jury's comparative negligence finding
15 was not supported by the law or evidence.¹⁰ Plaintiff also
16 argued the trial court abused its discretion in striking all
17 testimony of Defendant's marijuana use, and the ruling should
18 be reversed.¹¹ Plaintiff requested that even if a full retrial
19 would not be required, the Court of Appeal should remand the
20 case for a new trial on the issue of intoxication.¹²

25 ⁸ *Appellant's Opening Br.* at 7, a copy of which is attached as Ex. A to
26 the Decl. of Anthony Boskovich in Resp. to Ct.'s Req. for Statement of
Issues, Aug. 5, 2014, ECF No. 56.

27 ⁹ *Id.*

¹⁰ *Id.* at 33-34.

¹¹ *Id.* at 21.

28 ¹² *Id.* at 32-33.

1 On February 28, 2014, the Court of Appeal filed its
2 decision, *Koopen v. Aberle*, 2014 WL 795662 (Cal. App. 1st Dist.
3 Feb. 28, 2014). The Court of Appeal rejected Defendant's
4 argument that the jury erred in allocating comparative fault
5 among the parties. *Id.* at *7. The Court of Appeal also found
6 the trial court did not abuse its discretion in striking the
7 testimony of Defendant's marijuana use, on the theory that
8 expert testimony was necessary. Plaintiff further argued
9 evidence of the marijuana consumption was relevant to the issue
10 of intoxication, and requested the Court of Appeal remand the
11 case for a new trial on that issue alone even if the judgment
12 were not reversed. The Court of Appeal expressly declined to
13 review the issue of intoxication or remand the case. The Court
14 of Appeal stated:

17 Here, the inclusion of the question about
18 intoxication was extraordinary because,
19 unlike the jury's findings of negligence
20 and causation, the fact of Aberle's
21 intoxication was not an element of Koopen's
22 claim. As the trial court noted in
23 permitting Koopen's requested jury
24 interrogatory, a finding on the issue of
25 intoxication was included in the verdict
26 form only as, in effect, a favor to the
27 bankruptcy court. Even if we were to
28 review the finding on intoxication,
conclude it was erroneous, and vacate it,
we would have no power to order a new trial
with respect to the issue because its
reversal would not affect the judgment. It
goes without saying that recognized forms
of state court proceedings do not include

1 the trial of an isolated fact, independent
2 of a cause of action or other right to
3 relief. From the perspective of this court,
4 the issue is therefore moot. The legal
5 significance of the finding of no
6 intoxication and the weight to be afforded
it in bankruptcy court are matters to be
determined by that court. We therefore
decline to review the jury's finding
regarding intoxication.

7 *Id.* at *7.

8 After the appellate court opinion was issued, the parties
9 returned to bankruptcy court to dispose of this proceeding.
10 Defendant filed a motion for summary judgment in this adversary
11 proceeding on July 2, 2014. Defendant argues issue preclusion
12 should apply to the jury's finding that Defendant was not
13 intoxicated. Plaintiff opposes the motion, and argues issue
14 preclusion cannot apply. At the hearing on August 6, 2014,
15 Plaintiff withdrew their claim that the debt was
16 nondischargeable under section 523(a)(6).
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19 Discussion

20 The issue before the court is whether the jury's finding
21 during the state court action that Defendant was not
22 intoxicated at the time of the accident should be given
23 preclusive effect in this nondischargeability proceeding. If
24 issue preclusion is appropriate, the jury's finding of non-
25 intoxication is determinative of whether the debt is excepted
26 from discharge.
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1 The doctrine of "[i]ssue preclusion bars successive
2 litigation of an issue of fact or law actually litigated and
3 resolved in a valid court determination essential to the prior
4 judgment, even if the issue recurs in the context of a
5 different claim." *Readylink Healthcare, Inc., v. State*
6 *Compensation Ins. Fund*, 754 F.3d 754, 760 (9th Cir. 2014)
7 (citing *Taylor v. Sturgell*, 553 U.S. 880, 892 (2008)) (internal
8 quotation marks omitted). Bankruptcy courts can apply issue
9 preclusion to findings made by state courts to determine if a
10 debt is excepted from discharge under section 523(a). *In re*
11 *Baldwin*, 249 F.3d 912, 917 (9th Cir. 2001) (citing *Grogan v.*
12 *Garner*, 498 U.S. 278, 284 n. 11 (1991)). The "preclusive
13 effect of a state court judgment [is determined] by applying
14 that state's preclusion principles." *Readylink Healthcare*, 754
15 F.3d at 60. For purposes of Defendant's Motion for Summary
16 Judgment, California law applies because the judgment in *Koopen*
17 *v. Aberle* was entered in the Alameda County Superior Court, and
18 affirmed by the Court of Appeal.

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22 In a recent opinion by the Ninth Circuit Court of Appeals,
23 *Readylink Healthcare, Inc., v. State Compensation Ins. Fund*,
24 754 F.3d 754 (9th Cir. 2014), that court set forth the
25 requirements for issue preclusion under California law. An
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1 issue can be given preclusive effect by a court in a subsequent
2 proceeding if five requirements are met.

3 First, the issue sought to be precluded from
4 relitigation must be identical to that decided
5 in a former proceeding. Second, this issue must
6 have been actually litigated in the former
7 proceeding. Third, it must have been necessarily
8 decided in the former proceeding. Fourth, the
9 decision in the former proceeding must be final
and on the merits. Finally, the party against
whom preclusion is sought must be the same as,
or in privity with, the party to the former
proceeding.

10 *Id.* at 460-61 (quoting *Lucido v. Superior Court* (1990) 51
11 Cal.3d 335, 341, 272 Cal.Rptr. 767, 769, 795 P.2d 1223, 1227).

12 The party asserting that the issue should be precluded has
13 the burden of demonstrating to the court in the subsequent
14 proceeding that these requirements are present. *In re Baldwin*,
15 249 F.3d at 917-18 (quoting *Lucido*, 51 Cal.3d at 341). If
16 these five preliminary requirements are established, the court
17 must consider whether application of issue preclusion would
18 further public policies including the "preservation of the
19 integrity of the judicial system, promotion of judicial
20 economy, and protection of litigants from harassment by
21 vexatious litigants." *Readylink Healthcare*, 754 F.3d at 761
22 (quoting *Lucido*, 51 Cal.3d at 341).
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1 The only aspect of this test that is in dispute in this
2 proceeding is whether the third requirement is met, i.e. was
3 the matter necessarily decided.

4 Analysis

5 Under California law, preclusive effect cannot be given if
6 a finding is "entirely unnecessary" to a judgment. *Readylink*
7 *Healthcare*, 754 F.3d at 762. If the final judgment was issued
8 by a trial court, the court in the subsequent proceeding should
9 determine the preclusive effect of the trial court's judgment
10 by examining the relevance of the issue for which preclusive
11 effect is sought to the trial courts' ultimate determination of
12 the matter. *See id.* at 760. If there has been appellate review
13 of a trial court's judgment, however, the court in the
14 subsequent matter should consider the disposition by the
15 appellate court to determine whether the matter was necessarily
16 decided. *See Murray v. Alaska Airlines, Inc.* (2010) 50 Cal.4th
17 860, 875, 114 Cal.Rptr.3d 241, 251, 237 P.3d 565, 574; *Zevnik*
18 *v. Superior Court* (2008) 159 Cal.App.4th 76, 83, 70 Cal.Rptr.3d
19 817, 821.

20 The *Koopen v. Aberle* state court matter has an unusual
21 procedural context: in connection with granting a motion for
22 relief from stay to permit an action to be tried in state
23 court, a bankruptcy judge essentially directed the plaintiff in
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1 that action to seek determination of an issue that would be
2 critical in a subsequent proceeding in the bankruptcy court
3 concerning dischargeability of a debt. As explained in greater
4 detail below, this context, and the Court of Appeals
5 disposition of the matter, dictates this court's conclusion
6 that it would be inappropriate to afford preclusive effect to
7 the jury's finding of non-intoxication.
8

9 ***The finding is not necessary to the judgment***

10 In *Koopen v. Aberle*, Plaintiff brought a claim for
11 negligence under a negligence *per se* and a traditional
12 negligence theory. The parties actually litigated the issue of
13 intoxication for purposes of negligence *per se*, and the jury
14 concluded Defendant was not intoxicated. Nevertheless,
15 Plaintiff succeeded in proving Defendant was negligent under a
16 traditional negligence theory and obtained a judgment against
17 Defendant.
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20 Although successful in obtaining the judgment, Plaintiff
21 appealed the trial court's decision at least partially because
22 Plaintiff needed the jury to determine Defendant was
23 intoxicated for the judgment to be excepted from discharge by
24 this court under section 523(a)(9). The Court of Appeal
25 expressly declined to consider the issue of intoxication.
26
27 *Koopen v. Aberle*, 2014 WL 795662 at *4 (Cal. App. 1st Dist.
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1 Feb. 28, 2014). The Court of Appeal did not decline to review
2 this issue merely because it could sufficiently dispose of the
3 matter on other grounds, and ruling on a further matter was not
4 consistent with principles of judicial economy. To the
5 contrary, the Court of Appeal went much further and explained
6 that the issue of intoxication was not an element of
7 Plaintiff's claim, and even if the issue of intoxication were
8 reviewed and reversed it would have no effect on the state
9 court judgment. *Id.* at *4-5. There is no other conclusion
10 possible than that the Court of Appeal determined that the
11 issue of intoxication was not necessary to the lower court's
12 judgment.
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15 And although it is unquestionably this court's
16 responsibility to determine the preclusive effect, *vel non*, of
17 the jury's finding of non-intoxication in the state court, this
18 court is convinced that it would be irresponsible to ignore the
19 definitive statement of the Court of Appeal that the finding of
20 non-intoxication was not necessary to the judgment. Therefore,
21 this court concludes that preclusive effect should not be
22 granted to the jury's finding in this matter.
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25 The Bankruptcy Appellate Panel for the Ninth Circuit has
26 stated repeatedly that bankruptcy courts should exercise
27 caution before granting preclusive effect to state court
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1 findings in nondischargeability proceedings. See *Genesis VJ,*
2 *Inc. v. Nguyen (In re Nguyen)*, 2012 WL 603680 at *7-8 (B.A.P.
3 9th Cir. Feb. 17, 2012) (finding unclear if state court decided
4 agency issue, determining bankruptcy court did not abuse its
5 discretion in declining to apply issue preclusion). The
6 Defendant has not met his burden to prove the jury's non-
7 intoxication finding should be given preclusive effect.
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9 ***Appellate Review and Issue Preclusion***

10 This court acknowledges, and the parties spent a lot of
11 time discussing, one aspect of the question whether to afford
12 preclusive effect to findings in a prior matter that has
13 generated a very interesting debate among California courts,
14 i.e. what is the preclusive effect of an issue actually
15 determined by a trial court that is neither relied upon, nor
16 disturbed, by a reviewing appellate court.
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18 In a 2003 decision, *DiRuzza v. County of Tehama*, 323 F.3d
19 1147 (9th Cir. 2003), the Ninth Circuit determined that an 1865
20 California Supreme Court case, *People v. Skidmore* (1865) 27
21 Cal. 287, remained controlling authority on this issue.
22 *DiRuzza*, 323 F.3d at 1156. According to *DiRuzza*, *Skidmore* held
23 that preclusive effect can be given to all grounds upon which
24 the lower court's judgment was based, unless that holding is
25 reversed on appeal. More recent California case law, however,
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1 provides reason to doubt the continuing validity of this
2 conclusion.

3 This bankruptcy court is certainly bound by the Ninth
4 Circuit Court of Appeals' interpretation of California state
5 law, including the Ninth Circuit's holding in *DiRuzza* that
6 *Skidmore* continues to be controlling authority in this state on
7 the issue of preclusive effect of findings not disturbed on
8 appeal. However, unlike in *DiRuzza* and *Skidmore*, the finding
9 at issue in this matter was not an *alternative* ground on which
10 the judgment was based. Defendant succeeded in obtaining a
11 judgment based on a traditional negligence theory, and that
12 judgment was appealed. The non-intoxication finding was
13 ultimately unnecessary and immaterial to the judgment, as
14 explained by the Court of Appeal.¹³ This court accordingly
15 believes that the clear ruling of the California Court of
16 Appeal takes this matter outside the circumstances pertaining
17 in *Skidmore* and *DiRuzza*, and that the appropriate result here
18 is that the finding not be given preclusive effect.

19 Moreover, the Court of Appeal's express declination to
20 review the finding of non-intoxication further removes this
21 matter from the rule announced in *Skidmore*.

22 ¹³ In *DiRuzza*, the Ninth Circuit considered a 1952 California Court of
23 Appeal decision, *Natural Soda Products Co. v. City of Los Angeles*
24 (1952) 109 Cal.App.2d 440, 240 P.2d 993, 996, which provided that the
25 general rule under *Skidmore* may have an exception for a finding that is
26 "unnecessary and immaterial." See *DiRuzza*, 323 F.3d at 1155.

1 Although the California Supreme Court has not expressly
2 overruled *Skidmore* post-*DiRuzza*, in 2010 that Court issued its
3 opinion in *Murray v. Alaska Airlines, Inc.* (2010) 50 Cal.4th
4 860, 114 Cal.Rptr.3d 241, 237 P.3d 565, which discussed the
5 importance of effective appellate review to a finding of issue
6 preclusion, and cited the *Restatement (Second) of Judgments* as
7 determinative on preclusive issues. See *Murray*, 50 Cal.4th at
8 875. The putative rule from *Skidmore*, that an unrelayed upon
9 but undisturbed finding from a trial court does not lose its
10 preclusive effect, appears to be directly contra the modern
11 rule adopted by the *Restatement (Second) of Judgments*, under
12 which only the grounds considered on appeal can be given
13 preclusive effect. See *Restatement (Second) of Judgments* §
14 28(1) (1982). According to section 28(1), issue preclusion
15 should not be applied when "[t]he party against whom preclusion
16 is sought could not, as a matter of law, have obtained review
17 of the judgment in the initial action." *Id.*

21 In *Murray*, the California Supreme Court determined issue
22 preclusion applied because the party against whom preclusion
23 was sought had the opportunity to appeal the determination made
24 by a federal official. The holding in *Murray* is arguably
25 limited on the facts that if a vehicle for appeal is available,
26 issue preclusion can be applied. However, the *Murray* decision
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1 indicates the opportunity for appellate review is important
2 under California law.¹⁴ In light of the holding in *Murray*,
3 Plaintiff's inability to obtain appellate review of the finding
4 of non-intoxication is itself instructive to this court's
5 analysis of the preclusive effect of the finding. See *Murray*,
6 50 Cal.4th at 875.
7

8 ***Some Remaining Procedural Issues***

9 As mentioned briefly above, at the conclusion of the
10 hearing on Defendant's Motion for Summary Judgment, the court
11 asked the parties for further briefing on two issues: (1) Were
12 the court to conclude that issue preclusion should not be
13 applied to the state court's determinations, what should be the
14 scope of the trial before this court, and is there any reason
15 why this court would lack judicial power to enter a final order
16 or judgment in this matter? and (2) in light of the
17 determinations by the trial court regarding intoxication, is
18 there any reason to limit the scope of the evidence that may be
19 presented to this court in a trial in this proceeding?
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23 ¹⁴ In at least two decisions published after *DiRuzza*, the California
24 Court of Appeal has followed the modern rule under the *Restatement*
25 (*Second*) of *Judgments*. See, e.g., *Zevnik v. Superior Court* (2008) 159
26 Cal.App.4th 76, 79, 88, 70 Cal.Rptr.3d 817, 819, 826 (finding *Skidmore*
27 is not controlling authority for issue preclusion under California law,
28 and "only the grounds relied on by the appellate court can establish
collateral estoppel"). Courts outside of California have also adopted
the modern rule. See *Rutanen v. Baylis (In re Baylis)*, 217 F.3d 66, 71
(1st Cir. 2000) (declining to apply preclusive effect in a
nondischargeability proceeding to a bad faith finding made by a state
probate court because the finding was not subject to appellate review).

1 After review of the parties' briefs, the court concludes
2 that there is no dispute about the first question: the parties
3 agree that the sole issue to be decided by this court is
4 whether Defendant was intoxicated at the time of the accident,
5 as provided in Section 523(a)(9), and that this is the proper
6 court to enter a final order on that issue.¹⁵ As to the second
7 question, the parties do disagree about the scope of evidence
8 that should be presented at a trial on this issue, Plaintiff
9 arguing that no restriction is appropriate, and Defendant
10 arguing that in light of the trial court's disposition of the
11 issue, including its exclusion of evidence for the reasons set
12 forth above, Plaintiff should be limited in its presentation to
13 the evidence actually considered by the jury.¹⁶

16 This court is convinced that if it is not to give
17 preclusive effect to the jury's finding on non-intoxication, it
18 cannot fairly limit the scope of evidence that may be produced
19 at trial, subject of course, to any appropriate motions in
20 limine or to strike, based solely on facts and arguments
21 presented contemporaneously to this court.

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25 ¹⁵ See Br. Of Pl. Re Questions Posed by Court at Hearing Of 6 August
26 2014, at 2, Sept. 8, 2014, ECF No. 58; Additional Br. In Support of
Mot. For Summ. J. by Debtor Ricky Lee Aberle at 3, Sept. 29, 2014, ECF
No. 59.

27 ¹⁶ See Br. Of Pl. Re Questions Posed by Court at Hearing Of 6 August
28 2014, at 3-5, Sept. 8, 2014, ECF No. 58; Additional Br. In Support of
Mot. For Summ. J. by Debtor Ricky Lee Aberle at 3-5, Sept. 29, 2014,
ECF No. 59.

Accordingly, the court will conduct a status conference, in this adversary proceeding on January 28, 2015, at 10:30 AM, to consider matters pertinent to trial setting and other logistical issues.

Conclusion

After considering the unique procedural history of this case, the court concludes that Plaintiff should not be precluded from litigating in this court the issue of intoxication. For the reasons set forth above, Defendant's Motion for Summary Judgment is denied.

END OF MEMORANDUM

COURT SERVICE LIST

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